IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9265 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHATURBHAI ALIAS DESHI NAVGANBHAI TALPADA VAGHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9265 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MS SMITA R PATEL for Petitioner No. 1

MR RM CHAUHAN, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of filing this Special Civil Application, the petitioner has challenged the order passed by the

Police Commissioner, Ahmedabad City, on 28th April, 2003, against the petitioner in exercise of powers conferred upon him by sec.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) directing detention of petitioner to be "bootlegger" within the meaning of PASA Act. In pursuance of the above said order, the petitioner came to be detained on 28th April, 2003.

2. The grounds placed on record and served upon the petitioner reveal that the detaining authority took into consideration two aspects. Firstly, registration of crime against the petitioner on 2nd August, 2002, and 27th September, 2002, under Sec.66(1)(b), 65(a)(e), 81 of the Bombay Prohibition Act wherein it is alleged that petitioner was found 770 litres and 240 litres of country liquor. Secondly, the detaining authority relied upon two in camera statements recorded by proposing authority on 25th April, 2003, and verified by detaining authority on 27th April, 2003. The incident revealed are dated 5th March, 2003 and 15th March, 2003 wherein the witnesses have stated that one of the witness was forced to deliver his vehicle to the petitioner for transport of the illegal liquor, while the other witness was beaten by the petitioner on suspicion that the witness was informing the police about the illegal activities of the petitioner. From the above material, the detaining authority passed the order impugned in this petition.

3. Learned advocate Mr.Jay Amin for learned advocate Ms.Subhadra Patel for the petitioner and learned AGP Mr.Chauhan for the respondents were heard at length. The affidavit-in-reply has placed on record by learned AGP of the detaining authority is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the learned AGP, the matter can be disposed of on the ground that the detaining authority applied its mind while passing order to the vital aspect of the matter. The detaining authority in the grounds clearly mentioned that the petitioner was under judicial custody at the time of passing of the order, but the detaining authority came to the conclusion that the petitioner was likely to move bail application and was likely to be released on bail and was likely to continue his illegal activities. The question is whether there was any material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. While going through the affidavit-in-reply as filed by the detaining authority vide paragraph 8 it is mentioned that

the detaining authority was aware about the fact that petitioner was in judicial custody and that the detaining authority took into consideration the legal provisions. It appears that except that there was no material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. Therefore, the facts of this case are squarely covered by a decision of the Apex Court in the matter of Amritlal Vs. Union of India as reported in AIR 2000 SC 3675. Thus, when there was no material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail, the order impugned is required to be set aside on the sole ground that the detaining authority did not apply its mind to the vital aspect of the matter. Learned advocate for the petitioner makes a statement that the petitioner is in judicial custody till today and he petitioner has not moved any application so far.

5. In the result, this special civil application is allowed. The order passed by the Police Commissioner, City of Ahmedabad, on 28th April, 2003, directing the detention of petitioner in exercise of powers conferred upon him under sec.3(2) of the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute with no order as to costs.

(J.R. Vora, J.)

syed/